

**IN THE UNITED STATE DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

| | | |
|---------------------------------|---|---|
| UNITED STATES OF AMERICA |) | |
| |) | |
| V. |) | Civil Action No. 3:07-cv-887-WHA |
| |) | (3:05-CR-00112) |
| |) | |
| PATRICK BASS |) | |

AFFIDAVIT

STATE OF ALABAMA)
COUNTY OF MONTGOMERY)

I, **CHRISTINE A. FREEMAN**, being duly sworn, states as follows:

1. I am employed by the office of the Federal Defender for the Middle District of Alabama.
2. I was assigned as trial counsel for Patrick Bass, in Case No. 3:05-CR-00112.
3. In Mr. Bass' Motion, filed on October 3, 2007, Mr. Bass alleges that his counsel was ineffective because there was no objection to a four-level sentencing enhancement for possessing a firearm "in connection with another felony offense," on the basis of his possession of a controlled substance. (Motion, p. 3, Ground One.)
4. It is correct that the possession of the controlled substance was the basis for the misdemeanor drug possession in violation of 18 U.S.C. §844, charged in Count 2 in this indictment; Count 2 was dismissed as a result of the plea agreement in this case.
5. It is correct that no objection was lodged to this sentencing enhancement imposed in calculating the sentence for the conviction on Count 1..

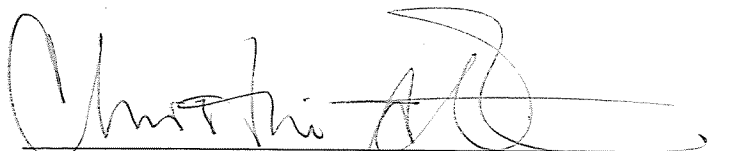
6. The U.S. Court of Appeals for the Eleventh Circuit has upheld application of this sentencing enhancement under apparently similar circumstances, i.e., in possession with a personal use quantity of drugs. See *U.S. v. Wooten*, 2007 WL 330736 (November 8, 2007).

7. It also appears that the Sentencing Guidelines intended the enhancement of a firearm sentence on the basis of a controlled substance violation to be restricted to “drug trafficking” offenses, and not mere possession of controlled substances. See United States Sentencing Guidelines (2006 ed.), § 2K2.1, Application Note 14 (B) [“Application When Other Offense is Burglary or Drug Offense” - noting that this enhancement applies “in the case of a drug trafficking offense in which a firearm is found in close proximity to drugs, drug-manufacturing materials, or drug paraphernalia.”)]

8. If Mr. Bass had pled guilty to both Count 1 and Count 2, it appears the conduct underlying Count 2 would not have been considered as a basis for a sentencing enhancement for the firearm offense in Count 1. Rather, the guideline sentence for each count of conviction would have been separately determined, as directed in U.S.S.G. § 1B1.1(d), and the resulting two sentences would have been “grouped” and run concurrently, as directed in U.S.S.G. §3D1.2 (noting that offenses covered by guidelines U.S.S.G. §§ 2K2.1 and 2D1.1 are “grouped”), and no separate sentencing enhancement would have been imposed on Count 1 for the conduct covered by Count 2.

9. Thus, Mr. Bass’ total sentence may have been lower if he had pled to both Count 1 and Count 2.

Further Affiant saith not.

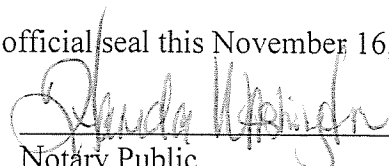

CHRISTINE A. FREEMAN

STATE OF ALABAMA)
MONTGOMERY COUNTY)

I, the undersigned authority, a Notary Public in and for said State of Alabama at Large, do hereby certify that **CHRISTINE A. FREEMAN**, whose name is signed to the foregoing Affidavit and who is known to me, acknowledged before me, on this day, that being informed of the contents of said instrument, she executed the same voluntarily, on the day the same bears date.

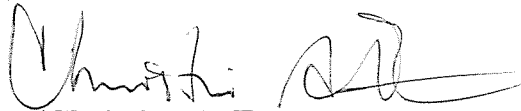
GIVEN under my hand and official seal this November 16, 2007.

(SEAL)


Notary Public
My Commission Expires: 6/15/2008

CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following: Andrew Schiff, Esq., Assistant United States Attorney, Montgomery, AL 36104.

A handwritten signature in black ink, appearing to read 'Christine A. Freeman', with a stylized flourish at the end.

s/Christine A. Freeman

CHRISTINE A. FREEMAN

TN BAR NO.: 11892

Federal Defenders

Middle District of Alabama

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